

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA
Civil Action No.: 1:12-CV-906**

**THE LOFTS AT ALBERT HALL
CONDOMINIUM ASSOCIATION,
INC. AND JEFFREY L. SMITH,**

Plaintiffs,

vs.

**VINTAGE OAKS II, A
CALIFORNIA LIMITED
PARTNERSHIP,
BARTON/BOESPELUG II, A
CALIFORNIA LIMITED
PARTNERSHIP, AND BULKLEY
INVESTORS,**

Defendants.

PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

Now come Plaintiffs, through counsel, pursuant to Rule 56 of the Federal Rules of Civil Procedure and Local Rule 56.1, and move for partial summary judgment on their First, Second, Third, and Fourth claims for relief. In support of their motion, Plaintiffs contemporaneously file their supporting brief and the following documents:

1. The Affidavit of Jeffrey L. Smith and attached exhibits.
2. The Affidavit of Angie Mauldin and attached exhibits.
3. The Affidavit of Posey Stanley and attached exhibits.
4. The Affidavit of Robert Riley and attached exhibits.
5. The Affidavit of Leigh Green and attached exhibits.
6. The Affidavit of Stephanie Byrd and attached exhibits.
7. The Affidavit of Greg Einstein and attached exhibit.

8. The Affidavit of H. Stephen Robinson and attached exhibits.

9. Plaintiffs' First Requests for Admission (with attached exhibits) and Defendants' Amended Responses to Plaintiffs' First Requests for Admission.

Plaintiffs further rely upon the following public records, previously filed by and relied upon by Defendants, in this action:

10. ECF No. 12-2: Declaration of Condominium of the Lofts at Albert Hall Condominium.

11. ECF No. 12-3: Amendment to Declaration of Condominium of the Lofts at Albert Hall Condominium.

As shown in their brief, and as evidenced by the facts established by the foregoing documents, Plaintiffs show that there is no contested issue of fact on any element of their claims for relief and that they are entitled to judgment, as a matter of law. Wherefore, Plaintiffs respectfully pray the court for enter partial summary judgment against Defendants:

1. Awarding Plaintiff, Jeffrey L. Smith a judgment of liability against Defendants and setting the matter for trial regarding damages;
2. Awarding Plaintiff the Lofts at Albert Hall Condominium, Inc. a judgment of liability against Defendants and setting the matter for trial regarding damages;
3. Awarding Plaintiffs their costs and reasonable attorney's fees in an amount to be established by Plaintiffs' following trial on damages or disposition on all other matters pending before the Court in this action, or, in the alternative, an award of attorney's fees accrued to and through the date of the Court's order, subject to proof of additional costs and fees accruing thereafter;
4. Entering a mandatory injunction requiring Defendants to contract for the replacement of the northern portion of the roof of Albert Hall with a roofing contractor acceptable to the Association pursuant to a proposed plan of work approved by the Association; and,

5. For such other relief as to the Court seems just and appropriate.

This the 11th day of June, 2014

/s/ Michael L. Robinson

Michael L. Robinson, N.C. Bar No. 9438
mrobinson@robinsonlawing.com

/s/ Kurt A. Seeber

Kurt A. Seeber, N.C. Bar No. 20110
kseeber@robinsonlawing.com

/s/ H. Stephen Robinson

Stephen Robinson, N.C. Bar No. 18401
Counsel for Plaintiffs
srobinson@robinsonlawing.com

OF COUNSEL:

ROBINSON & LAWING, L.L.P.

101 North Cherry Street, Suite 720

Winston-Salem, North Carolina 27101-4035

Telephone: (336) 631-8500

Facsimile: (336) 631-6999

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CERTIFICATE OF SERVICE

I hereby certify that on June 11, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Gary Sue
Burton Sue & Anderson, LLP
Gary.Sue@burtonandsue.com

Respectfully submitted,

/s/[Stephen Robinson]
Stephen Robinson
Robinson & Lawing, L.L.P.
101 North Cherry Street, Suite 720
Winston-Salem, North Carolina 27101-4035
Phone: (336) 631-8500
E-mail: srobinson@robinsonlawing.com